

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0540

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

JAIME AND RAMONA RODRIGUEZ TRUST
SACRAMENTO COUNTY

This Complaint is issued to Jaime and Ramona Rodriguez Trust (hereafter Rodriguez Trust) pursuant to California Water Code (CWC) section 13268, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on a finding of failure to submit a technical report pursuant to California Water Code (CWC) section 13267.

The Executive Officer of the Central Valley Regional Water Quality Control Board (hereafter Central Valley Water Board) finds, with respect to Rodriguez Trust's acts, or failure to act, the following:

1. Growers within the Central Valley Region who have irrigation water and/or stormwater leaving their irrigated lands may contribute, or have the potential to contribute waste to surface waters. The term "waste" is very broadly defined in CWC section 13050(d) and includes runoff of sediment or agricultural chemicals. The term "waters of the state" includes all surface water and groundwater within the state. (CWC section 13050(e).) The Central Valley Water Board is required to regulate the amount of waste that may be discharged to waters of the state. (CWC section 13263.)
2. CWC section 13267 authorizes the Central Valley Water Board to conduct investigations and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to waters of the state.
3. Central Valley Water Board staff developed a list of landowners in Sacramento County, including Rodriguez Trust, that, based upon available data, were likely to be discharging wastewater from irrigated lands to surface waters and did not have regulatory coverage under waste discharge requirements (i.e., permits) or waivers of waste discharge requirements.
4. In developing this list, Central Valley Water Board staff used county assessor data and geographical land use data (i.e., the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) land use data) to assist in identifying potential discharges of agricultural wastewater to surface waters and to identify owners and operators of agricultural lands who may not have complied with the California Water Code. Both data sets were used to develop lists of parcels for which CWC section 13267 Orders were issued that require parcel owners to provide a technical report that includes information on whether an irrigated agricultural operation is taking place on the

parcel, the nature of the operation, if regulatory coverage has been obtained, and if not, why it has not been obtained.

5. Evaluation of county assessor and FMMP data indicated three parcels of agricultural land on the developed list were owned by Rodriguez Trust in Sacramento County (APN 15600300010000, 144 acres; APN 15600200120000, 113.6 acres; and APN 15600200140000, 44.4 acres).
6. On 29 July 2008, the Central Valley Water Board issued a CWC section 13267 Order (hereafter Order) to Rodriguez Trust, sent via certified mail, requiring the submission of a written technical report 15 calendar days from receipt of the Order.
7. The Order provides, *"Your irrigated agricultural operations may discharge waste in a manner that requires regulatory action by the Regional Water Board (CWC sections 13260-13269). This is based on the (1) geographic location, (2) review of pesticide use, land use and public records, (3) proximity to surface water bodies and (4) participant lists provided by Coalition Groups."*
8. As detailed in the Order, Rodriguez Trust could comply by completing a one-page report form enclosed with the Order that calls for information on parcel location; assessor parcel number; acres; crop; if regulatory coverage had been obtained; and if not, the reason coverage was not obtained.
9. In requiring the technical report, the Order explains, *"The required information is needed to determine if you discharge "waste" to surface waters, and if so, whether you have obtained regulatory coverage."*
10. The certified mail receipt for the Order issued to Rodriguez Trust was signed as received by Jaime Rodriguez on 1 August 2008. Rodriguez Trust did not respond or submit a technical report to the Central Valley Water Board.
11. Thereafter, a Notice of Violation (NOV) was issued and sent via certified mail on 27 August 2008 to Rodriguez Trust, for failure to submit a technical report as required by the Order. The certified letter was returned as "Unclaimed".
12. On 4 December 2008, staff contacted Jaime Rodriguez by phone. Mr. Rodriguez did not seem to speak English, so a staff person who speaks Spanish assisted in communicating with him. Staff explained that his technical report had not yet been received, and that consequently he may receive a fine. Mr. Rodriguez stated that he thought he had already sent in the required paperwork. He then provided staff with his fax number and asked that staff fax him the form for him to fill out. Staff faxed the technical report form to Mr. Rodriguez. Despite staff's efforts, he did not submit the completed technical report.
13. On 9 February 2009, staff left a message explaining that the Central Valley Water Board has yet to receive Mr. Rodriguez's technical report and gave him a deadline of 18 February 2009, to submit the technical report and avoid fines.

14. On 11 February 2009, staff left a final message with Mr. Rodriguez explaining that the Central Valley Water Board has yet to receive his technical report, that he could be facing a fine and that the Central Valley Water Board will not be attempting to contact him again before assessing a fine.
15. Central Valley Water Board staff checked the compliance tracking system and case files and it was verified that the Central Valley Water Board had not received a response or technical report from Rodriguez Trust.
16. As of 19 May 2009, Rodriguez Trust's technical report is 277 days past due.
17. CWC section 13267 (a) states: *"A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region."*
18. CWC section 13267 (b) states: *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region..., shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."*
19. CWC section 13268 (a) states: *"Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."*
20. CWC section 13268(b)(1) states: *"Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) or Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1000) for each day in which the violation occurs."*
21. The required technical report is 277 days past due. The maximum liability under CWC section 13268(b)(1) for the nonsubmittal of the technical report is \$1000 per day late, for a total of two hundred seventy-seven thousand dollars (\$277,000).
22. The Executive Officer has considered the nature, circumstances, extent, and gravity Rodriguez Trust' failure to submit a technical report as required, Rodriguez Trust' ability to pay the proposed civil liability, the effect of the proposed civil liability on Rodriguez Trust' ability to continue in business, any history of violations, the degree of culpability,

economic benefit or savings, if any, resulting from the failure to submit the technical report required, and other matters as justice may require, including the staff time required to prepare this Complaint.

23. Central Valley Water Board staff spent a total of 11.82 hours preparing this Complaint. The total cost for staff time is \$1537 based on a rate of \$130 per hour.

JAIME AND RAMONA RODRIGUEZ TRUST IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that Rodriguez Trust be assessed **an administrative civil liability in the amount of three thousand dollars (\$3000)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13268 and 13327, as well as the State Water Resources Control Board's Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **13/14 August 2009**, unless Rodriguez Trust does either of the following by **18 June 2009**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board along with payment for the proposed civil liability of **three thousand dollars (\$3,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, which may include raising the monetary value of the Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

original signed by
PAMELA C. CREEDON, Executive Officer

19 May 2009

(Date)

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Jaime and Ramona Rodriguez Trust (hereinafter "Rodriguez Trust") in connection with Administrative Civil Liability Complaint R5-2009-0540 (hereinafter the "Complaint");
 2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
 3. I hereby waive any right Rodriguez Trust may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
 4. ☐ (***Check here if Rodriguez Trust will waive the hearing requirement and will pay the fine***)
 - a. I certify that Rodriguez Trust will remit payment for the proposed civil liability in the amount of **three thousand dollars (\$3,000)** by check, which will contain a reference to "ACL Complaint R5 2009-0540" and will be made payable to the "State Water Resources Control Board Waste Discharge Permit Fund." Payment must be received by the Central Valley Water Board by **18 June 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **13/14 August 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject Rodriguez Trust to further enforcement, including additional civil liability.
- or-**
5. ☐ (***Check here if Rodriguez Trust will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.***) I certify that Rodriguez Trust will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, Rodriguez Trust is *not* waiving their right to a hearing on this matter. By checking this box Rodriguez Trust requests that the Central Valley Water Board delay the hearing so that Rodriguez Trust and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. Rodriguez Trust agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
 6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)